

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.)	
425 Third Street SW, Suite 800)	
Washington, DC 20024,)	
)	
and)	
)	
THE DAILY CALLER)	Civil Action No. _____
NEWS FOUNDATION)	
1050 17 th Street, N.W., Suite 900)	
Washington, DC 20036)	
)	
v.)	
)	
U.S. DEPARTMENT OF DEFENSE,)	
1400 Defense Pentagon)	
Washington, DC 20301,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Judicial Watch, Inc. (“Plaintiff”) brings this action against Defendant U.S. Department of Defense (“Defendant”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability,

and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly serves FOIA requests on federal agencies. Plaintiff analyzes the agencies' responses and disseminates its findings and any records it receives to the American public to inform them about "what their government is up to."

4. Plaintiff The Daily Caller News Foundation has its principal place of business at 1050 17th Street, N.W., Suite 900, Washington, DC 20036. Founded in 2011 by Tucker Carlson, a 20-year veteran of print and broadcast media, and Neil Patel, former chief policy adviser to Vice President Dick Cheney, Plaintiff is a 501(c)(3) non-profit providing original investigative reporting from a team of professional reporters that operates for the public benefit. Plaintiff's website reaches approximately three million unique monthly visitors and its content, which is available without charge to any eligible news publisher, is published by The Daily Caller, Yahoo News, Business Insider and a growing host of other media outlets, reaching a combined audience estimated in excess of 30 million readers.

5. Defendant is an agency of the United States government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 1400 Defense Pentagon, Washington, DC 20301.

STATEMENT OF FACTS

6. On February 3, 2017, Plaintiffs submitted the identical FOIA requests to the Office of the Secretary of Defense/Joint Staff ("OSD/JS") and the Office of the Secretary of the Navy ("Navy") seeking the following:

Any and all supporting documents, including but not limited to studies, analyses, reports and memoranda, that accompanied then-Marine Corps Commandant Joseph Dunford's September 2015 request to then-Navy Secretary Ray Mabus and/or then-Secretary of Defense Ash Carter that exceptions be made to allowing women to serve in all Marine Corps occupational specialties.

7. By a letter dated February 10, 2017, OSD/JS confirmed receipt of Plaintiff's request on February 8, 2017 and advised Plaintiff that it had assigned the request case number 17-F-0525.

8. By an email dated February 9, 2017, the Navy confirmed receipt of Plaintiff's request on February 9, 2017 and advised Plaintiff that it had assigned the request tracking number DON-NAVY-2017-003411.

9. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records or demonstrate the records are lawfully exempt from disclosure; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is violating FOIA by failing to search for and produce all records responsive to Plaintiff's FOIA requests or demonstrate that the requested records are lawfully exempt from production.

12. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with FOIA.

13. Because Defendant failed to determine whether to comply with Plaintiff's requests within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* indices of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: May 13, 2019

Respectfully submitted,

/s/ James F. Peterson

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